

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JANE A.,

Claimant,

vs.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. L- 2005010506

DECISION

This matter came on regularly for hearing before Carolyn Dee Magnuson, Administrative Law Judge of the Office of Administrative Hearings, on August 8, 2005, July 12, 2006, and August 28, 2006 in Culver City, California.

Martin Jon Lieberman, Claimant's brother, represented the Claimant.

Lisa Basiri, Fair Hearing Coordinator for Westside Regional Center (Service Agency or WRC), appeared on behalf of the Service Agency.

Evidence was received, and the matter was submitted on August 28, 2006.

ISSUES

The issue to be decided is whether Claimant is eligible, under the provisions of the Lanterman Act,¹ to receive services provided by the Service Agency.

FINDINGS OF FACT

1. Claimant is a 56 year old woman. She has been married for approximately 20 years, and her husband is a WRC client. Claimant and her husband live in their own

¹ Mr. Lieberman did not restrict his request for services on behalf of his sister to the Lanterman Act. However, a Fair Hearing like the instant one has jurisdiction only over Lanterman Act issues.

home with the assistance of service providers paid for by the Service Agency to assist Mr. A. with his independent living skills.

2. Claimant's school records contain entries referring to her poor coordination. At one point, there is a statement that Claimant was born brain-damaged and the notation "C.P." is inserted in the records beside that statement. In addition, at one point the unidentified scrivener opines that Claimant is so different that "special training should be considered."

3. Mr. Lieberman testified that, according to his mother, Claimant's delivery had been retarded to allow the obstetrician to arrive and deliver the baby. It was established that neurological damage can occur from such an event.

4. However, a review of the Claimant's school records revealed that Claimant was not placed in special education classes. Her grades in her general education classes were mostly Cs with a sprinkling of Bs and Ds. Claimant did graduate from high school in 1967. Thereafter, she attended college for approximately one semester, but ultimately dropped out of school. She worked as an office clerk in an insurance company for 34 years, but is not currently employed because of poor health.

5. On October 28, 2004, Lisa M. Doi, Ph.D., a Service Agency psychologist, conducted a psychological evaluation of Claimant. Dr. Doi reviewed Claimant's high school records, which suggested that, in the 1960s, Claimant had verbal skills in the average range with performance abilities in the mildly deficient range.

6. Dr. Doi noted in her report that Claimant appeared to have difficulty focusing and concentrating during the course of the testing. Moreover, she would select a response without considering all the available replies despite being cautioned to take her time.

7. In the process of testing Claimant, Dr. Doi administered the Wide Range Achievement Test - Revision 3 to assess Claimant's academic functioning in the areas of reading, spelling and arithmetic. Claimant's reading and spelling achievements were in the average range; arithmetic achievement was in the borderline range. Dr. Doi concluded that Claimant's levels of academic achievement did not suggest significantly sub-average intellectual functioning.

8. Claimant's adaptive behavior was assessed using the Vineland Adaptive Behavior Scales with Claimant and her brother serving as informants. Based on the information they provided, Dr. Doi concluded that Claimant functioned in the adequate range of adaptive behavior including the areas of communication skills, daily living skills, and socialization abilities.

9. In order to assess Claimant's cognitive/intellectual functioning, Dr. Doi attempted to administer the Wechsler adult Intelligence Scale-Third Edition. Because of

Claimant's difficulties in focusing and her impulsive manner of responding, Dr. Doi discontinued the test because she believed the results would not be reliable. At the hearing, Dr. Doi explained that, because all other indicators confirmed that Claimant was not mentally retarded and because Claimant continued to be distractible and impulsive, Dr. Doi did not attempt to administer a different intelligence test to Claimant.

10. Dr. Doi concluded that, based on the Claimant's performance on the tests administered by Dr. Doi, as well as Claimant's school records, the evidence did not suggest Claimant had an overall global developmental delay, rather her difficulties were the result of a learning disorder.

11. In August 2005, Roger L. Huf, M.D., performed a neurological assessment of Claimant. He concluded that, although Claimant suffered from serious medical conditions, she did not have cerebral palsy. Other than Claimant's school records, no evidence was submitted to support a contention that Claimant suffered from cerebral palsy.

CONCLUSIONS OF LAW

12. Under the Lanterman Developmental Disabilities Act, the State of California accepts responsibility for persons with developmental disabilities. It is the expressed intent of the Legislature that sufficiently complete services and supports be provided to meet the needs of a person with developmental disabilities and to support their integration into the mainstream life of the community.

13. Welfare and Institutions Code section 4512, subdivision (a), defines developmental disability for the purposes of eligibility under the Lanterman Act:

(a) "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

For an individual to be eligible for regional center services, s/he must meet the criteria established by section 4512.

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14. California Code of Regulations, title 17, section 54001 provides:

(a) “Substantial handicap” [as required to find a “developmental disability” under CCR §54000] means a condition which results in major impairment of cognitive and/or social functioning. Moreover, a substantial handicap represents a condition of sufficient impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential.

(b) Since an individual’s cognitive and/or social functioning are many-faceted, the existence of a major impairment shall be determined through an assessment which shall address aspects of functioning including, but not limited to:

- (1) Communication skills;
- (2) Learning;
- (3) Self-care;
- (4) Mobility;
- (5) Self-direction;
- (6) Capacity for independent living;
- (7) Economic self-sufficiency.

15. California Code of Regulations, title 17, section 54000, subdivision (c), provides:

Developmental Disability shall not include handicapping conditions that are:

(1) Solely psychiatric disorders where there is impaired intellectual or social functioning which originated as a result of the psychiatric disorder or treatment given for such a disorder. Such psychiatric disorders include psycho-social deprivation and/or psychosis, severe neurosis or personality disorders even where social and intellectual functioning have become seriously impaired as an integral manifestation of the disorder.

(2) Solely learning disabilities. A learning disability is a condition which manifests as a significant discrepancy between estimated cognitive potential and actual level of educational performance and which is not a result of generalized mental

retardation, educational or psycho-social deprivation, psychiatric disorder, or sensory loss.

(3) Solely physical in nature. These conditions include congenital anomalies or conditions acquired through disease, accident, or faulty development which are not associated with a neurological impairment that results in a need for treatment similar to that required for mental retardation.

16. The Diagnostic and Statistical Manual of Mental Disorders, 4th edition revised, (DSM-IV-R) is the bible of mental health professionals. About Mental Retardation, the DSM-IV says, in relevant part:

The essential feature of Mental Retardation is significantly sub-average general intellectual functions (Criterion A) that is accompanied by significant limitations in adaptive functions in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological processes that affect the functioning of the central nervous system.

General intellectual functioning is defined by the intelligence quotient (IQ or IQ-equivalent) obtained by assessment with one or more of the standardized, individually administered intelligence tests (e.g. Wechsler Intelligence Scales for Children Revised, Stanford-Binet, Kaufman Assessment Battery for Children). Significantly subaverage intellectual functioning is defined as an IQ of about 70 or below (approximately 2 standard deviations below the mean). It should be noted that there is a measurement error of approximately 5 points in assessing IQ although this may vary from instrument to instrument. . . . Thus, it is possible to diagnose Mental Retardation in individuals with IQs between 70 and 75 who exhibit significant deficits in adaptive behavior. Conversely, Mental retardation would not be diagnosed in an individual with an IQ lower than 70 if there are no significant deficits or impairment in adaptive functioning. . . .

Impairments in adaptive functioning, rather than a low IQ are usually the presenting symptoms in individuals with Mental Retardation. Adaptive functioning refers to how effectively individuals cope with common life demands and how well they meet the standards of

personal independence expected of someone in their particular age group, sociocultural background, and community setting.

17. In this case, Claimant does not demonstrate both sub-average intellectual functioning and significant limitations in adaptive functioning. All of the psychometric testing done of Claimant showed that her intellectual functioning was above the mentally retarded range, and there is no record of psychometric testing showing that Claimant cognitively functions in the mentally retarded range.

18. To be closely related or similar to mental retardation, there must be a qualitative or functional correlation of cognitive and adaptive deficits which result in an individual's functioning like a person with mental retardation. This determination, however, cannot be strictly based on the cognitive and adaptive qualities or criteria used to diagnose mental retardation; otherwise, this fifth category would be redundant.

19. The Guidelines for Determining "5th Category" Eligibility (guidelines) that have been adopted by the Association of Regional Center Agencies, while not controlling, offer assistance. Those guidelines state that, for an individual to function in a manner similar to a person with mental retardation, s/he must demonstrate sub-average intellectual functioning that is accompanied by significant limitations in adaptive functioning. The guidelines provide that adaptive functioning should be evaluated by clinical judgments, i.e. personal observation of the individual, supplemented by formal adaptive behavior scales.

20. The guidelines state that, "[i]n determining whether an individual requires 'treatment similar to that required for mentally retarded individuals,' the team should consider the nature of training and intervention that is most appropriate for the individual." The guidelines suggest that "[i]ndividuals who require long term training with steps broken down into small, discrete units taught through repetition may be eligible" for services as a person who requires treatment similar to a mentally retarded person.

21. Claimant does not require services and supports similar to those needed by a mentally retarded person. Claimant is able to, and does, exercise a great deal of independence. She decides what she will do and where she will go and with whom she will associate.

22. While there may be areas in which Claimant has challenges she does not successfully meet unless she has assistance from someone else, those challenges are not substantially similar to the impediments faced by people who are mentally retarded nor are they challenges for which treatment similar to that required by mentally retarded individuals is needed.

23. In the best of all possible worlds, there would be resources available sufficient to meet the needs of everyone. In this less than utopian existence, there are needs that go unmet because the resources that are available for such purposes must be allocated.

Thus, the eligibility qualifications for regional center services established by the Lanterman Act are very circumscribed, and the evidence established that Claimant does not meet those criteria. Therefore she is not eligible to receive services from WRC.

24. Mr. Lieberman indicated very strongly that he believes there is an institutional bias at WRC against qualifying applicants for Lanterman Act services. However, the evidence did not establish that any action taken by WRC with regard to Claimant's case was affected by personal or institutional bias against her.²

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's request to be determined to be a developmentally disabled person entitled to receive supports and services from WRC under the provisions of the Lanterman Act is denied.

Dated: September 12, 2006

CAROLYN D. MAGNUSON
Administrative Law Judge
Office of Administrative Hearings

NOTE: This is a final administrative decision pursuant to Welfare & Institutions Code section 4712.5(b) (2). Both parties are bound hereby. Either party may appeal this decision to a court of competent jurisdiction within 90 days.

² The issue of institutional bias would be properly raised by a grievance filed under the provisions of Welfare and Institutions Code section 4731